

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service ) DA 98-2410  
 )

TO: The Commission

**COMMENTS OF THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby responds to the Commission's request for comments on the *Second Recommended Decision* released by the Federal-State Joint Board ("Joint Board") in the above-captioned proceeding on November 25, 1998.

CompTel is pleased to support the *Second Recommended Decision* as an important step forward in implementing the universal service regime established by Congress in Section 254 of the Communications Act. Adopting the Joint Board's recommendations on the calculation and implementation of carriers' contributions will help ensure that the services and rates available to consumers in high cost areas will be affordable and reasonably comparable to those in urban areas. Moreover, the Joint Board's recommendation that the federal support requirement be removed on a dollar-for-dollar basis from interstate access charges would, if adopted, promote the public interest by moving access charges closer towards the underlying costs of providing exchange access. However, CompTel does not support the Joint Board's recommendation for the adoption of rules governing the recovery of universal service contributions from consumers. As CompTel explained in the Truth-In-Billing rulemaking (CC Docket No. 98-170), the Commission should not adopt such rules because they would needlessly increase billing costs

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(and hence retail rates) while resulting in complex bills that would confuse rather than enlighten consumers. *See* Comments of the Competitive Telecommunications Association, CC Docket No. 98-170, filed Nov. 13, 1998, at 8-9.

**I. THE JOINT BOARD'S RECOMMENDATIONS FOR CALCULATING AND IMPLEMENTING UNIVERSAL SERVICE CONTRIBUTIONS WILL PROMOTE THE OBJECTIVES OF SECTION 254**

The Joint Board made recommendations for calculating and implementing universal service contributions that will promote the statutory objectives of ensuring sufficient federal universal service support so that the services and rates available to consumers in high-cost areas are reasonably comparable to those available in urban and other lower-cost areas. These comments will focus upon recommendations of particular interest to CompTel, while proposing one additional measure necessary to ensure that universal service contributions are calculated and distributed in a competitively neutral manner.

*A. Size of the Area Over Which Costs Are Averaged.*

The *Second Recommended Decision* (at ¶¶ 32-35) recommends that federal support be determined by measuring costs at the study area scale, not the wire center scale. CompTel strongly supports this recommendation for three reasons. *First*, calculating federal support using study areas is consistent with the methodology used for the existing high cost support program, and therefore is consistent with maintaining federal support at its current level. *Second*, the study area results are more representative of the costs incurred by all carriers, and particularly new entrants, to provide local services. For example, when a new entrant seeks to provide local services through unbundled network elements ("UNEs"), the incumbent local exchange carrier

(“ILEC”) typically charges rates for those UNEs that are the same throughout its operating territory within a state. *Third*, calculating support requirements by averaging costs at the wire center scale would lead to unnecessary increases in the scope of federal support. This would contravene the general principles that “the federal high cost support fund should be only as large as necessary” and that ratepayers should not be burdened with a federal support requirement in excess of current levels. *Second Recommended Decision* at ¶¶ 47, 49.

Concerns that using the study area method may be incompatible with local competition are speculative and premature. Such concerns relate solely to local competition among residential users, and there is virtually no significant new entry for providing local services to residential users today due to the failure of the ILECs to implement the market-opening provisions of the Telecommunications Act of 1996. The Joint Board’s recommended approach – using study areas now while being alert to the possible impact on support mechanisms of future competition – is prudent and should be adopted.

*B. Interstate Access Charge Reductions.*

The Joint Board recommended that, in the event the Commission determines to reduce implicit subsidies in interstate access charges to reflect explicit federal support requirements, such reductions should be on a dollar-for-dollar basis. *Second Recommended Decision* at ¶ 23. CompTel strongly agrees with the Joint Board that the establishment of explicit federal support has removed any policy or legal basis for implicit subsidies in interstate access charges. There is no dispute within the industry that interstate access charges are many billions of dollars higher than exchange access costs. For years, the only rationale offered by the ILECs for such a massive subsidy (and one which they have never proven) is that it implicitly funds universal

service. While CompTel is dubious that the above-cost portion of interstate access charges implicitly supports universal service, the establishment of explicit support mechanisms removes any arguable basis for above-cost access charges. As a result, the Commission should immediately remove *all* above-cost elements of interstate access rates by prescribing cost-based rates across the board.<sup>1</sup> At the very least, the Commission should adopt the Joint Board's recommendation by prescriptively removing every dollar of explicit federal universal service support from current access rates. Removing unjustified implicit support from interstate access charges is compelled by the statutory requirement that universal service subsidies must be "explicit." 47 U.S.C. § 254(e). Further, it would promote the public interest by generating cost-based interstate access rates and ensuring that the ILECs cannot double-recover universal service subsidies.

*C. Costs Incurred By New Entrants To Combine UNEs.*

The Joint Board endorsed "competitive neutrality" as the "guiding principle of universal service reform." *Second Recommended Decision* at ¶ 56. The Commission itself has endorsed the competitive neutrality principle, defining it as "universal service support mechanisms and rules [that] neither unfairly advantage nor disadvantage one provider over another, and [that] neither unfairly favor nor disfavor one technology over another." *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8801 (1997). CompTel submits that the universal service regime is not competitively neutral unless new entrants who provide qualifying services

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<sup>1</sup> In the Commission's access charge reform proceeding (CC Docket No. 96-262), CompTel has consistently taken the position that the FCC should prescribe cost-based interstate access charges as soon as practicable. *E.g.*, Comments of the Competitive Telecommunications Association, CC Docket No. 96-262, filed Oct. 26, 1998, at 4-5.

through a combination of UNEs and who qualify for universal service support are permitted to recover the costs which they incur, and which the ILECs do not, of combining UNEs.

As the Commission knows, the ILECs have refused to provide UNEs to new entrants in pre-existing combinations in light of the decision by the U.S. Court of Appeals for the Eighth Circuit in *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997). At least until that decision is overturned by the U.S. Supreme Court, the result is that the ILECs can force new entrants to incur significant costs to combine UNEs for the provision of local and other services. In some cases, the ILECs reserve the right to separate pre-existing combinations before providing UNEs to new entrants and to impose charges, which can be in excess of \$100 per line, for providing this “service” to new entrants. In other cases, the ILECs do not actually separate the pre-existing combinations before providing UNEs to new entrants, but they impose a so-called “glue” charge on top of the UNE rates. By contrast, the ILECs themselves provide local services using pre-existing combinations without paying either type of charge.

In these circumstances, CompTel proposes that the Commission issue a ruling that eligible carriers may recover these charges pursuant to the universal service regime. Obviously, these types of charge on top of UNE rates are a prohibitive bar to competition in this market segment unless new entrants can recover those costs under the universal service regime. Excluding such costs from the universal service regime would violate the principle of competitive neutrality by giving the ILECs an insurmountable competitive advantage in providing local services that qualify for universal service assistance.

*D. Contributions On a Flat, Per-Line Basis.*

The *Second Recommended Decision* (at ¶ 63) urged the Commission to consider an approach whereby universal service contributions would be assessed on a flat, per-line basis. CompTel agrees that such an approach merits serious consideration, and urges the Commission to initiate an inquiry to do so. A flat, per-line contribution is consistent with the statutory requirement of “specific” and “predictable” contributions. 47 U.S.C. § 254(b)(5). That statutory requirement benefits not only the carriers who make contributions, but the consumers who ultimately foot the bill for them. From the perspective of both carriers and consumers, a regime of flat, per-line contributions would provide much greater specificity and predictability than the current system. Further, such a regime would permit contributions to be imposed directly upon access lines by the ILECs. There would be no need for the cumbersome and needlessly costly method of imposing such contributions initially upon interexchange carriers, which pass them through to subscribers either as a line item on a monthly bill or by building them into retail rates. The Joint Board’s and the Commission’s concerns about the manner in which universal service charges are being described on bills, and allocated among interexchange carriers’ customers and classes of customers, would be fully allayed under a regime of flat, per-line universal service contributions. Such a regime would obviate the regulations recommended by the Joint Board in this proceeding and proposed by the Commission in the Truth-in-Billing proceeding to govern the billing and recovery of universal service contributions by interexchange carriers.

## **II. THE COMMISSION SHOULD NOT ADOPT REGULATIONS GOVERNING HOW UNIVERSAL SERVICE CONTRIBUTIONS ARE BILLED TO OR RECOVERED FROM CUSTOMERS**

The Joint Board recommended that the Commission give “careful consideration” to adopting rules governing the recovery of universal service contributions by carriers from their end-user subscribers. *Second Recommended Decision* at ¶ 69. CompTel strongly opposes any such rules. The Joint Board’s proposal is based upon the theory that some carriers may have “market power” in the recovery of universal service contributions. *Id.* However, the Commission has found repeatedly that the interexchange market is competitive and that no carrier has the ability to wield market power. *E.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 20730, 20733, 20742-43 (1996). Further, it is impossible, as an economic or rate-making matter, to calculate accurately any carrier’s universal service costs on a per-customer basis. Historically the Commission has not sought to regulate how interexchange carriers recover individual access rate elements from their subscribers, and there is no cause to impose such regulations here. The Commission can and should rely upon market forces to ensure that carriers allocate universal service costs among their customers in a just and reasonable manner.

The Joint Board also recommended that the Commission consider adopting rules governing how universal service line-item charges are portrayed in subscriber bills. *Second Recommended Decision* at ¶¶ 70-73. For the reasons stated in its comments in the Truth-in-Billing rulemaking, CompTel urges the Commission not to act upon this recommendation. *See* Comments of the Competitive Telecommunications Association, CC Docket No. 98-170, filed Nov. 13, 1998, at 8-9. Such regulations would dramatically increase the billing costs incurred by interexchange carriers, resulting in higher retail rates for subscribers. Further, the measures

being considered by the Commission would transform what should be straight-forward bills into complex legal and regulatory documents that would be more likely to confuse subscribers than enlighten them. The Joint Board itself cautioned the Commission that regulations governing the description of certain line-item charges may “engender more confusion” among subscribers given carriers’ discretion in establishing retail rates for their services. *Second Recommended Decision* at ¶ 72 n.91. It would cause more harm than good to regulate the descriptions of line-item universal service charges in bills, and therefore the Commission should not adopt the types of regulations discussed in the *Second Recommended Decision* or the FCC’s Truth-in-Billing rulemaking.

### **Conclusion**

For the foregoing reasons, CompTel supports the Second Recommended Decision, with the exception of the recommended rules governing the recovery of universal service contributions by carriers from end-user subscribers. Further, CompTel urges the Commission to rule that eligible carriers may recover through the universal service system the cost of combining UNEs for the provision of qualifying services.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Marlene Borack, hereby certify that on this 23rd day of December, 1998, a copy of  
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